

VOLUME

OF

COURT OF CRIMINAL APPEALS NO.

CR 04-0476

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

CIRCUIT COURT NO. CC 02-732.60

CIRCUIT JUDGE Shashy

Type of Conviction / Order Appealed From:

Supplemental

Sentence Imposed:

Defendant Indigent: ☒ YES ☐ NO

WILLIE L. GARDNER AIS# 231984

(Appellant's Attorney)

(Telephone No.)

WILLIE L. GARDNER
NAME OF APPELLANT

100 WARRIOR LANE

(Address)

BESSEMER

(City)

AL

(State)

35023

(Zip Code)

V.

STATE OF ALABAMA

(State represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter name and address of municipal attorney below.

NAME OF APPELLEE

Supplemental

(For Court of Criminal Appeals Use Only)

INDEX
CLERK'S RECORD

CASE ACTION SUMMARY.....	1-2
MOTION TO SUPPLEMENT THE RECORD ON APPEAL TO INCLUDE REPORTER'S TRANSCRIPT.....	3-4
REPORTER'S TRANSCRIPT ORDER.....	5
ORDER GRNATING DEFENDANT'S MOTION TO SUPPLEMENT.....	6
CERTIFICATE OF COMPLETION.....	7

ACRO370
ER: TOR
E: 1ALABAMA JUDICIAL INFORMATION SYSTEM
CASE ACTION SUMMARY
CIRCUIT CRIMINAL

CASE: CC-2002-000732.60

RUN DATE: 09/09/2004

IN THE CIRCUIT COURT OF MONTGOMERY

JUDGE: WAS

STATE OF ALABAMA

VS

GARDNER WILLIE LIZZLIE
AIS# 231984 4-13
100 WARRIOR LANE
BESSEMER, AL 35023 0000

CASE: CC 2002 000732.60

DOB: 05/29/1985

SEX: M

RACE: B

HT: 5 10

WT: 170

HR: BLK EYES: BRO

SSN: 903000732

ALIAS NAMES:

CHARGE01: RULE 32-FELONY
OFFENSE DATE:CODE01: RULE LIT: RULE 32-FELONY TYP: F #: 001
AGENCY/OFFICER: 0030100DATE WAR/CAP ISS:
DATE INDICTED:
DATE RELEASED:
BOND AMOUNT:

\$.00

DATE ARRESTED: 09/04/2001
DATE FILED: 08/26/2004
DATE HEARING:
SURETIES:DATE 1:
DATE 2:DESC:
DESC:TIME: 0000
TIME: 0000

TRACKING NOS: CC 2002 000732 00 /

DEF/ATY:

TYPE:

TYPE:

00000

00000

PROSECUTOR:

CSE: CC200200073200 CHK/TICKET NO:
COURT REPORTER: SID NO:
DEF STATUS: PRISON DEMAND: 000000000 GRAND JURY:

OPER: TOR

TRANS DATE	ACTIONS, JUDGEMENTS, AND NOTES	OPER: TOR
09/09/2004	ASSIGNED TO: (WAS) WILLIAM A. SHASHY (AR01)	OPE
09/09/2004	CHARGE 01: RULE 32-FELONY/#CNTS: 001 (AR01)	TOR
09/09/2004	INITIAL STATUS SET TO: "P" - PRISON (AR01)	TOR
09/09/2004	DEFENDANT ARRESTED ON: 09/04/2001 (AR01)	TOR
09/09/2004	FILED ON: 08/26/2004 (AR01)	TOR
09/09/2004	CASE ACTION SUMMARY PRINTED (AR08)	TOR
09/09/2004	CAS ATTACHMENT PRINTED (AR08)	TOR
9/09/04	Copy of Rule 32 Sent to DA & Ag.	
11-15-04	Order Dismissing Rule 32	
10/07/04	State's Answer	
2/27/04	Request for Production	
11/05/04	Request Response for Part 2 to Respondent Answer	
12/15/04	Notice of Appeal	

ACRO369 ALABAMA JUDICIAL INFORMATION CENTER

CASE ACTION SUMMARY
CONTINUATIONCASE: CC 2002 000732.60
JUDGE ID: WAS

STATE OF ALABAMA

VS

GARDNER WILLIE LIZZIE

DATE

ACTION, JUDGMENTS, CASE NOTES

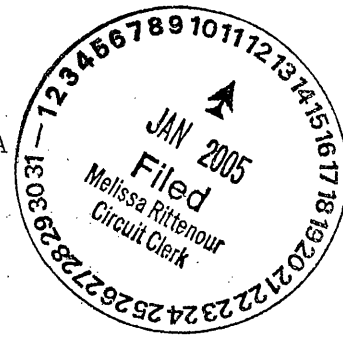
12/14/04 Notice Of Appeal w/ Forms

12/16/04 Appeal Transmittal To Crm. Appls, AG & Def.

01/04/05 Transcript To Crm. Appls, AG & Def.

01/10/05 Motion To Supplement The Record On Appeal To
Include Reporter's Transcript~~01/11/05 Release~~

01/21/05 Order Granting Motion To Supplement



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

WILLIE L. GARDNER,

Petitioner/Appellant,

vs.

STATE OF ALABAMA,

Respondent/Appellees.

*

*

*

*

*

CASE NO. CC02-732.60

CRIMINAL APPEALS DK. NO. _____

MOTION TO SUPPLEMENT THE RECORD
ON APPEAL TO INCLUDE REPORTER'S TRANSCRIPT

COMES, now the petitioner/appellant in the above style cause before the court pursuant to Rule 10(g) Ala.R.App.Pro. and state as follows:

1. On or about Jan. 4, 2005 the circuit court certified the completion of the record to the Criminal Court of Appeals.
2. On or about 12/10/04 the appellant filed Transcript Order Form with the Notice of Appeal requesting that the procedures of the 13A-5-42, Code of Ala. 1975 that transpired in relationship to the guilty plead be made part of the record for purposes of appeal. see attached Ex. R-61 Record on Appeal.
3. Upon the petitioner/appellant receiving the certified record on appeal he observed that there was no proceedings consistent with the colloquy of the plead bargaining process other other colloquy consistent with the process under 13A-5-42, Code of Ala. 1975; and such have specific relevance to the ineffective assistance of counsel issue/and the knowingly and voluntarily entering of the plead.

THEREFORE, with premises considered your petitioner/appellant herein moves that the record on appeal be supplemented.

Respectfully submitted,

Willie L. Gardner

4

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing legal document has been served on the appellee/respondents this 10th day Jan 2005, by placing the same in the United States mail postage prepaid and addressed as follows:

DARYL D. BAILEY
CHIEF DEPUTY DISTRICT ATTORNEY
100 South Lawrence Street
Montgomery, Ala. 36104

Respectfully submitted,

Willie L. Gardner
WILLIE L. GARDNER
A.I.S.#231984
100 Warrior Lane
Bessemer, Ala. 35023

cc. CLERK, CRIMINAL COURT OF APPEALS
STATE OF ALABAMA
300 Dexter Ave.
P.O. Box 301555
Montgomery, Ala. 36130-1555

Form ARAP-1C 8/91 Alabama Rules of Appellate Procedure (A.R. App. See Rules 10(c) and 11(b) of the

TO BE COMPLETED BY COUNSEL FOR THE APPELLANT OR BY THE APPELLANT IF NOT REPRESENTED AND FILED WITH THE WRITTEN NOTICE OF APPEAL OR FILED WITHIN 7 DAYS AFTER ORAL NOTICE OF APPEAL IS GIVEN.

☒ CIRCUIT COURT ☐ DISTRICT COURT ☐ JUVENILE COURT OF MONTGOMERY COUNTY
WILLIE L. GARDNER, Appellant

v. ☒ STATE OF ALABAMA ☐ MUNICIPALITY OF _____

Case Number <u>CG-02-073260-WAS</u>	Date of Judgment/Sentence/Order <u>11/15/04</u>
Date of Notice of Appeal Oral: _____ Written: <u>12/14/04</u>	Indigent Status Granted: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

PART 1. TO BE SIGNED IF THE APPEAL WILL NOT HAVE A COURT REPORTER'S TRANSCRIPT:

I CERTIFY THAT NO REPORTER'S TRANSCRIPT IS EXPECTED AND THAT THE RECORD ON APPEAL SHALL CONSIST OF THE CLERK'S RECORD ONLY. IF THE APPEAL IS FROM DISTRICT COURT OR JUVENILE COURT, I ALSO CERTIFY (1) THAT A STIPULATION OF FACTS WILL BE INCLUDED IN THE CLERK'S RECORD AND THAT THE APPELLANT WAIVES HIS RIGHT TO A JURY TRIAL IF SO ENTITLED; OR (2) THAT THE PARTIES HAVE STIPULATED THAT ONLY QUESTIONS OF LAW ARE INVOLVED AND THAT THE QUESTIONS WILL BE CERTIFIED BY THE JUVENILE/DISTRICT COURT FOR INCLUSION IN THE CLERK'S RECORD (SEE RULE 28(A)(1), ALABAMA RULES OF JUVENILE PROCEDURE, AND §12-12-72, CODE OF ALABAMA 1975).

X Signature _____ X Date _____ X Print or Type Name _____

PART 2. DESIGNATION OF PROCEEDINGS TO BE TRANSCRIBED. Request is hereby made to the court reporter(s) indicated below for a transcript of the following proceedings in the above referenced case (see Rule 10(c)(2), Alabama Rules of Appellate Procedure (A.R.App.P.)):

MARK PROCEEDINGS REQUESTED:

- A. ☒ TRIAL PROCEEDINGS - Although this designation will include the judgment and sentence proceedings, a transcript of the organization of the jury and arguments of counsel must be designated separately.
- B. ☐ ORGANIZATION OF THE JURY - This designation will include voir dire examination and challenges for cause. Note that in noncapital cases the voir dire of the jury will not be recorded unless the trial judge so directs. (See Rule 19.4, ARCP.)
- C. ☐ ARGUMENTS OF COUNSEL - Note that in noncapital cases the arguments of counsel will not be recorded unless the trial judge so directs. (See Rule 19.4, ARCP.)

COURT REPORTER(S)
trans. of proceedings under
19A-5-42 Ala Code 1975,
guilty pleads capital murder

IN ADDITION TO ANY PROCEEDINGS DESIGNATED ABOVE, SPECIAL REQUEST IS HEREBY MADE TO INCLUDE THE FOLLOWING PROCEEDINGS IN THE REPORTER'S TRANSCRIPT PORTION OF THE RECORD ON APPEAL. (ATTACH ADDITIONAL PAGES IF NECESSARY):

ADDITIONAL PROCEEDINGS REQUESTED

DATE

COURT REPORTER(S)

D. ALL PLEADING OF RULE 32 8/22/04

E. _____

F. _____

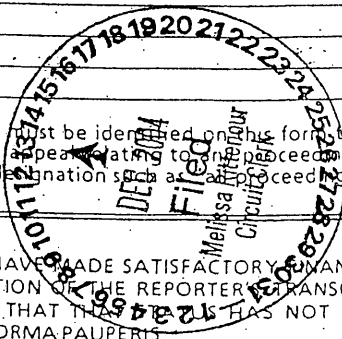
G. _____

IMPORTANT NOTICE: The court reporter who reported the proceedings for which a transcript is requested must be identified on this form to be effective. Additionally, it is important to note that the appellant may not be permitted to raise any issue on appeal relating to the proceedings in the case that are not specifically designated on this form for inclusion in the reporter's transcript. A general designation such as "all proceedings" is not sufficient. (See Rule 10(c)(2), A.R.App.P.)

PART 3. MUST BE SIGNED IF THE APPEAL WILL HAVE A COURT REPORTER'S TRANSCRIPT:

I CERTIFY THAT I HAVE DISTRIBUTED THIS FORM AS SET OUT BELOW. I ALSO CERTIFY (1) THAT I HAVE MADE SATISFACTORY FINANCIAL ARRANGEMENTS WITH EACH COURT REPORTER LISTED ABOVE FOR PREPARING HIS OR HER PORTION OF THE REPORTER'S TRANSCRIPT HEREIN REQUESTED; OR (2) THAT THE APPELLANT PROCEEDED AT TRIAL AS AN INDIGENT AND THAT THAT STATUS HAS NOT BEEN REVOKED; OR, (3) THAT THE APPELLANT HAS BEEN GIVEN PERMISSION TO PROCEED ON APPEAL IN FORMA PAUPERIS.

Willie Gardner 12/10/04 Willie L. Gardner
Signature Date Print or Type Name



DISTRIBUTION: Original filed with Clerk of Trial Court and copies mailed to: (1) Clerk of the Court of Criminal Appeals, (2) the District Attorney, (3) the Attorney General or the municipal prosecutor in lieu of the District Attorney and the Attorney General if the appeal is from a municipal conviction, and (4) to each Court Reporter who reported proceedings designated for inclusion in the reporter's transcript.

6

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

WILLIE LIZZLIE GARDNER)
v.) CASE NO. CR-04-0476
(Montgomery Circuit Court No.CC02-732.60)
STATE OF ALABAMA)

ORDER

It is hereby ORDERED that Defendant's Motion to Supplement the Record on Appeal filed on January 12, 2005, is granted. It is directed that the supplemental record be prepared and filed at the earliest possible date and by no later than February 8, 2005.

Done this the 9th day of January, 2005.

William A. Shashy
WILLIAM A. SHASHY
Circuit Judge

Hon. H. W. "Bucky" McMillan
Willie Lizzlie Gardner, Pro Se
Office of the Attorney General
Mary King, Court Reporter

RECEIVED
1-21-05
CIRCUIT COURT CLERK

7

State of Alabama
Unified Judicial System

ARAP-14

Rev. 11/91

**CERTIFICATE OF COMPLETION AND
TRANSMITTAL OF RECORD ON
APPEAL BY TRIAL CLERK**Appellate Case Number
_____TO: THE CLERK OF
THE COURT OF CRIMINAL APPEALS OF ALABAMADATE OF
NOTICE OF APPEAL: 12/14/04

APPELLANT

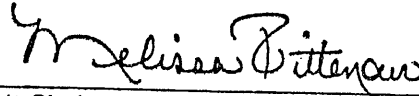
Willie L. Gardner

v. STATE OF ALABAMA

I certify that I have this date completed and transmitted herewith to the appellate court the record on appeal by assembling in (a single volume of _____ pages) (_____ volumes of 200 pages each and one volume of _____ pages) the clerk's record and the reporter's transcript and that one copy each of the record on appeal has been served on the defendant and the Attorney General of the State of Alabama for the preparation of briefs.

I certify that a copy of this certificate has this date been served on counsel for each party to the appeal.

DATED this 9th day of February, 2005.



Circuit Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CIRCUIT COURT
OF
MONTGOMERY COUNTY, ALABAMA

STATE OF ALABAMA,
Plaintiff,
VS. CC-02-732
WILLIE L. GARDNER,
Defendant.

_____/

TRIAL
OCTOBER 27-28, 2003

BEFORE: THE HONORABLE WILLIAM A. SHASHY
CIRCUIT JUDGE

* * * * *

APPEARANCES

FOR THE STATE:

Ms. Ellen Brooks
Ms. Vernetta Perkins
Mr. Michael Kidd

FOR THE DEFENDANT:

Ms. Debra Hollis
Mr. David Belser

MARY R. KING, RMR

OFFICIAL COURT REPORTER



1 (Defendant present.)

2 THE COURT: Ladies and gentlemen,
3 we're about to start the selection of a jury in
4 the case of State of Alabama versus Willie
5 L. Gardner. This is a case in which
6 Mr. Gardner is charged with capital murder. I
7 mention that to you because I'm going to ask
8 you shortly if you know or if you've heard
9 anything about the facts or circumstances
10 surrounding this case. But before I do that,
11 I'm going to introduce you to who is sitting
12 here today.

13 The State of Alabama today is represented
14 by Ms. Ellen Brooks. Ms. Brooks, would you
15 introduce yourself and who is sitting with you
16 today?

17 MS. BROOKS: Yes, Your Honor. Good
18 morning. My name is Ellen Brooks, and I'm your
19 district attorney. Working with us on this
20 case is Mr. Michael Kidd, who is a deputy
21 district attorney; and also, Ms. Vernetta
22 Perkins, deputy district attorney.

23 Would you like me to introduce them?

24 THE COURT: Yes, ma'am.

25 MS. BROOKS: The mother of the

1 deceased in the case is Robin Benefield.

2 Robin, would you stand? And also involved in
3 the case is a person -- is a victim, the other
4 victim, Ray Davis.

5 THE COURT: Thank you, ma'am. Now I'm
6 going to introduce the attorneys representing
7 the defendant today.

8 Mr. David Belser, would you introduce
9 yourself and who sitting with you today?

10 MR. BELSER: My name is David Belser.
11 My co-counsel is Deborah Hollis. And sitting
12 with me today is Willie Gardner.

13 THE COURT: All right. Thank you,
14 sir. Now that I've introduced everyone here,
15 I'm going to have Ms. Cummings call the name of
16 the potential jurors. When she calls your
17 name, please stand, give your occupation. If
18 you're married, give us the occupation of your
19 spouse, okay?

20 LAW CLERK: Rita Allen.

21 PROSPECTIVE JUROR: I work with the
22 State of Alabama Department of Revenue. I'm a
23 manager there. My husband also works for the
24 State of Alabama Department of Revenue, and
25 he's a network specialist.

1 LAW CLERK: Dana Alton.

2 PROSPECTIVE JUROR: I'm technology
3 coordinator at Forest Avenue Elementary
4 School. I'm not married.

5 LAW CLERK: Ellen Armstead.

6 PROSPECTIVE JUROR: I'm traffic
7 coordinator and my husband is an assembler.

8 LAW CLERK: Sharon Atkinson.

9 PROSPECTIVE JUROR: I'm client account
10 manager with Xerox Corporation. My husband is
11 the Dean of the College of Veterinary Medicine
12 at Tuskegee University.

13 LAW CLERK: Garrett Baldwin.

14 PROSPECTIVE JUROR: My name is Garrett
15 Baldwin. I'm not working anywhere right now.

16 LAW CLERK: Stephanie Barlow.

17 PROSPECTIVE JUROR: I'm an assistant
18 director at a day care, New Life Care; and my
19 husband works at Thermalex.

20 LAW CLERK: Christy Bell.

21 PROSPECTIVE JUROR: I'm a registered
22 nurse, and I'm not married.

23 LAW CLERK: Martha Blackwell.

24 PROSPECTIVE JUROR: I'm a retired AUM
25 faculty member, and my husband is deceased.

1 LAW CLERK: Mary Boone.

2 PROSPECTIVE JUROR: I'm not working
3 right now. My husband is a welder at
4 Continental Eagle.

5 LAW CLERK: Amy Boyd.

6 PROSPECTIVE JUROR: Teacher at Goodwyn
7 Junior High School. My husband is retired.

8 LAW CLERK: James Bozeman.

9 PROSPECTIVE JUROR: My wife and I both
10 are employed with the Montgomery County
11 Commission.

12 LAW CLERK: Maryann Brown.

13 PROSPECTIVE JUROR: My name is Maryann
14 Hayes Brown, and I'm a retired faculty member
15 at Troy State University in Dothan. And I'm a
16 widow.

17 LAW CLERK: Eva Carson.

18 PROSPECTIVE JUROR: I'm a teacher with
19 the Montgomery public schools. My husband is
20 assistant principal at Baldwin Junior High
21 School.

22 LAW CLERK: Leslie Causey.

23 PROSPECTIVE JUROR: My name is Leslie
24 Causey. My wife Jackie and I own and operate
25 Central Alabama Greenhouses.

1 LAW CLERK: L. H. Courson.

2 PROSPECTIVE JUROR: Lance Henry
3 Courson, manufacturing engineering manager at
4 Von Gal Palletizers. My wife is an insurance
5 agent at the Pinckard Agency off Vaughn Road.

6 LAW CLERK: Mose Credic.

7 PROSPECTIVE JUROR: My name is Mose
8 Credic. I'm assistant principal at Calhoun
9 High School in Letohatchee, Alabama. My wife
10 is a Mary Kay consultant.

11 LAW CLERK: Blanche Culpepper.

12 PROSPECTIVE JUROR: Blanche Culpepper.
13 I'm retired from Regions Bank. My husband is
14 also retired.

15 LAW CLERK: Douglas Cumuze.

16 PROSPECTIVE JUROR: Douglas Cumuze.
17 Director of operations Capitol Trailways Motor
18 Lines, divorced.

19 LAW CLERK: John Davis.

20 PROSPECTIVE JUROR: John Davis. I'm a
21 self-employed dispute resolution professional,
22 and my wife is the owner of Tranquil Grove Pet
23 Cemetery.

24 LAW CLERK: Leonard Davis.

25 PROSPECTIVE JUROR: My name is Leonard

1 Davis. I work for General Dynamics, and I'm
2 single. I'm single.

3 LAW CLERK: Michael Diggs.

4 PROSPECTIVE JUROR: Mike Diggs. I'm a
5 cost analyst for Automated Research, and my
6 wife is a preschool teacher.

7 LAW CLERK: Rebecca Dobbs.

8 PROSPECTIVE JUROR: I'm a registered
9 nurse. I work at HealthSouth, and I'm
10 divorced.

11 LAW CLERK: Dana Discroll.

12 PROSPECTIVE JUROR: I'm an
13 administrator with the Department of Public
14 Health, and I'm not married.

15 LAW CLERK: Stephen Duncan.

16 PROSPECTIVE JUROR: Buster with
17 Central Alabama Food Service, and I'm not
18 married.

19 LAW CLERK: Lottie Eldridge. Lottie
20 Eldridge.

21 PROSPECTIVE JUROR: I'm a housemaid.

22 LAW CLERK: Linda Evans.

23 PROSPECTIVE JUROR: I'm Linda Evans.
24 I'm regional -- southeast regional director for
25 CMS Information Services, information

1 technology; and my husband is retired.

2 LAW CLERK: Clement Fitzpatrick.

3 PROSPECTIVE JUROR: I'm Tranham

4 Fitzpatrick. I'm CEO of Guilford Capital

5 Corporation. My wife Martha is a homemaker.

6 LAW CLERK: Elaine Flowers.

7 PROSPECTIVE JUROR: I'm a retired

8 nurse. My husband is retired as a civil

9 engineer.

10 LAW CLERK: Kathy Green.

11 PROSPECTIVE JUROR: I'm a widowed

12 woman.

13 LAW CLERK: Lucia Grice.

14 PROSPECTIVE JUROR: I'm self-employed,

15 and my husband works for Senari Systems as a

16 contractor.

17 LAW CLERK: Mary Gunn.

18 PROSPECTIVE JUROR: I'm a teller at

19 Regions Bank, and my husband works for the

20 State of Alabama Insurance Division.

21 LAW CLERK: Deborah Hall.

22 PROSPECTIVE JUROR: I'm Deborah Hall.

23 I'm training coordinator for the State

24 Department of Finance, and my husband is a

25 self-employed photographer.

1 LAW CLERK: Perry Hardy.

2 PROSPECTIVE JUROR: My name is Perry
3 Hardy. I'm a supervisor of the driver's
4 license division of Department of Public
5 Safety, and my husband is a supervisor of
6 shipping and receiving, CCC and Associates.

7 LAW CLERK: Barbara Harper.

8 PROSPECTIVE JUROR: I'm special
9 projects coordinator at --

10 (Brief interruption.)

11 THE COURT: I'm sorry. Would you
12 repeat that, please? Can you repeat that?

13 PROSPECTIVE JUROR: Special projects
14 coordinator at Montgomery AIDS Outreach, and
15 I'm divorced.

16 THE COURT: Thank you, ma'am.

17 LAW CLERK: Barbara Harris.

18 PROSPECTIVE JUROR: I'm employed at
19 ConAgra, and I'm also a Mary Kay consultant.
20 And my husband works for the Montgomery Housing
21 Authority.

22 LAW CLERK: Rebecca Henderson.

23 PROSPECTIVE JUROR: I'm a housewife,
24 and my husband has Capitol Fence Company.

25 LAW CLERK: Larry Holbrook.

1 PROSPECTIVE JUROR: Senior engineering
2 manager for Lockheed Martin, and I'm divorced.

3 LAW CLERK: Adrian Houston.

4 PROSPECTIVE JUROR: I'm a certified
5 network administrator for General Dynamics, and
6 my husband installs fire alarm systems.

7 LAW CLERK: Thomas Hughes.

8 PROSPECTIVE JUROR: Telecommunications
9 operator for the State of Alabama, and my wife
10 works for Alfa Insurance.

11 LAW CLERK: Jerry Hugley.

12 PROSPECTIVE JUROR: ASU, and not
13 married. Alabama State University, not
14 married.

15 THE COURT: Anybody's name we did not
16 call?

17 Now I'm going to ask you a few questions.
18 If you need to respond, please stand, again,
19 tell me your name and any details that may be
20 helpful. If I ask a question which refers to
21 family members, this would include spouse,
22 children, grandchildren, parents, grandparents,
23 brothers and sisters.

24 As I said earlier, the defendant, who is
25 sitting here today, Willie Gardner, are any of

1 you related by blood or marriage or personally
2 acquainted with Mr. Gardner?

3 Are any of you related by blood or
4 marriage or personally acquainted with his
5 attorneys, Mr. Belser and -- yes, sir.

6 PROSPECTIVE JUROR: I'm acquainted
7 with Mr. Belser.

8 THE COURT: Judge Davis. What about
9 Ms. -- I forgot her name.

10 MS. HOLLIS: Hollis.

11 THE COURT: I'm sorry. What about
12 Ms. Hollis. I have it written down here. I
13 keep losing it. I'm just terrible on names.

14 Yes, sir.

15 PROSPECTIVE JUROR: I'm acquainted
16 with Mr. Belser. I'm Tranham Fitzpatrick.

17 THE COURT: All right. Thank you,
18 sir.

19 Now, let me ask you this. Would the fact
20 that you know Mr. Belser in any way affect your
21 ability to base your verdict on the evidence
22 presented in this case?

23 PROSPECTIVE JUROR: No, sir.

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: All right. Now, the same

1 question over here to these attorneys, the
2 district attorneys, Ms. Ellen Brooks. Anybody
3 related to Ms. Brooks, Mr. Kidd or Mr. Perkins,
4 know them or related to them?

5 PROSPECTIVE JUROR: I'm acquainted
6 with Ms. Brooks.

7 THE COURT: All right.

8 PROSPECTIVE JUROR: I'm also
9 acquainted with Ms. Brooks.

10 THE COURT: Your name, ma'am?

11 PROSPECTIVE JUROR: Dana Driscoll.

12 THE COURT: Driscoll. Okay. And
13 Mr. Fitzpatrick.

14 PROSPECTIVE JUROR: I'm acquainted
15 with her.

16 PROSPECTIVE JUROR: I'm also
17 acquainted with Ms. Brooks.

18 (inaudible.)

19 THE COURT: I'm sorry. You need to
20 stand up, ma'am. It doesn't carry unless you
21 stand up.

22 PROSPECTIVE JUROR: I understand. I'm
23 acquainted with Ellen.

24 THE COURT: All right. Thank you.
25 And your name again?

1 PROSPECTIVE JUROR: Martha Blackwell.

2 THE COURT: All right. Thank you.

3 Anybody related by blood or marriage or
4 personally acquainted with who is sitting with
5 them today? That would be Mr. Davis and Ms. --
6 tell me your name again.

7 MS. BENEFIELD: Benefield.

8 THE COURT: Benefield. I'm sorry.
9 Anybody know those folks, related to them by
10 blood or marriage?

11 PROSPECTIVE JUROR: My maiden name is
12 Benefield, but I don't know -- I've never seen
13 her before. Probably not related, but --

14 THE COURT: And your name again?

15 PROSPECTIVE JUROR: Rebecca Benefield.

16 THE COURT: Thank you, ma'am. Is
17 anyone here a witness in this case?

18 Now, does anybody have a witness list?

19 MS. BROOKS: Yes, sir.

20 THE COURT: All right. Can y'all read
21 the potential list of witnesses?

22 MS. BROOKS: Did you want me --

23 THE COURT: And if you know any of
24 them or are related to them, let us know.

25 Okay.

1 MS. BROOKS: Good morning. Sergeant
2 Keith Barnett, Montgomery Police Department;
3 Scott Belton with the Alabama Department of
4 Forensic Sciences; Detective J. M. Bowman,
5 Montgomery Police Department; Dr. Ben Bristol,
6 Alabama Department of Forensic Sciences; we
7 just did Ray Davis; Lieutenant Mike Gantt,
8 Montgomery Police Department; B. F. Harrison,
9 officer with the Montgomery Police Department;
10 Detective E. E. or Geno Howton, H-O-W-T-O-N,
11 Montgomery Police Department; Ricky Huett, an
12 evidence technician, Montgomery Police
13 Department; Sergeant S. A. Martino, Montgomery
14 Police Department; Detective G. R. Naquin, Guy
15 Naquin, N-A-Q-U-I-N, Montgomery Police
16 Department; Mr. Mickey Phillips, owner of the
17 Premium Package Store on Adams Avenue; Joe
18 Saloom, S-A-L-O-O-M, Alabama Department of
19 Forensic Sciences; and Tawaskie Williams.

20 Thank you, Judge.

21 THE COURT: Thank you. Anybody know
22 any of those folks or related to them by blood
23 or marriage?

24 All right. Has anyone here or anyone in
25 your immediate family been employed by the

1 Montgomery Police Department or any other law
2 enforcement agency? Yes, sir.

3 PROSPECTIVE JUROR: My wife was
4 employed by the city police department 20 years
5 ago.

6 THE COURT: All right. And that's --

7 PROSPECTIVE JUROR: As a civilian.

8 THE COURT: That's Judge Davis.

9 All right.

10 PROSPECTIVE JUROR: I'm employed by
11 the Department of Public Safety.

12 THE COURT: And your name again?

13 PROSPECTIVE JUROR: Perry Hardy.

14 THE COURT: All right. Thank you,
15 ma'am.

16 Does anyone here have any interest in the
17 conviction or acquittal of the defendant or has
18 anyone made any promises or given any
19 assurances that he or she will convict or
20 acquit the defendant?

21 Does anyone have a fixed opinion as to the
22 guilt or innocence of the defendant which would
23 bias your verdict?

24 Now, this case -- let me tell you what
25 this case is about. I don't think I did that.

1 This is an alleged capital murder case that
2 arises out of the robbery of -- what was the
3 name of the store? Someone help me out here.

4 MS. BROOKS: Premium Package Store or
5 Big Al's.

6 THE COURT: And the date of it?

7 MS. BROOKS: Labor Day, 2001.

8 THE COURT: Now, there has been some
9 things in the newspaper and the press about
10 that. Has anybody heard anything about that
11 case?

12 PROSPECTIVE JUROR: I've seen it on --
13 Blanche Culpepper. I've seen it on -- you
14 know, in the newspaper.

15 PROSPECTIVE JUROR: And I have, too.
16 Tranham Fitzpatrick.

17 THE COURT: All right. That would be
18 Mrs. Culpepper?

19 PROSPECTIVE JUROR: Yes, sir.

20 PROSPECTIVE JUROR: Tranham
21 Fitzpatrick.

22 THE COURT: Fitzpatrick.

23 PROSPECTIVE JUROR: Adrian Houston.

24 PROSPECTIVE JUROR: Tom Hughes. And
25 I've seen it on the TV --

1 THE COURT: Tommy Hughes. I'm sorry.
2 Who else? Wait a minute. Y'all hold on.
3 Let's start on the front row. Wait a minute.
4 Y'all have got to stand up. We just don't hear
5 you. I'm sorry.

6 PROSPECTIVE JUROR: Elaine Flowers. I
7 saw it on TV and the newspaper.

8 THE COURT: All right. Anybody else
9 on the front row?

10 PROSPECTIVE JUROR: Sharon Atkinson.
11 I saw it in the newspaper.

12 PROSPECTIVE JUROR: Stephen Duncan.
13 I've seen it on the news and the newspaper.

14 PROSPECTIVE JUROR: Adrian Houston,
15 newspaper.

16 THE COURT: All right. The next row.
17 Second row.

18 All right. Third row.

19 PROSPECTIVE JUROR: Kathy Green, and
20 I've seen it in the news and -- the newspaper
21 and the TV, both.

22 THE COURT: All right.

23 PROSPECTIVE JUROR: Martha Blackwell,
24 newspaper and TV.

25 PROSPECTIVE JUROR: Linda Evans,

1 newspaper.

2 THE COURT: That was Evans?

3 PROSPECTIVE JUROR: Yes, sir.

4 PROSPECTIVE JUROR: You had already
5 gotten my name, I think, Judge.

6 THE COURT: Yes, ma'am.

7 All right. Next row. We got
8 Mr. Fitzpatrick. All right.

9 PROSPECTIVE JUROR: Garrett. I've
10 seen it on the news.

11 THE COURT: That was Garrett?

12 PROSPECTIVE JUROR: Yes, Garrett.

13 THE COURT: I'm sorry. I didn't get
14 your name right. Tell me your name again.

15 PROSPECTIVE JUROR: Garrett Baldwin.

16 THE COURT: Baldwin. All right.

17 Next row. Judge Davis.

18 PROSPECTIVE JUROR: Newspaper and TV.

19 THE COURT: All right.

20 PROSPECTIVE JUROR: Thomas Hughes,
21 paper and TV.

22 THE COURT: All right. Anyone else?

23 Has anyone here or anyone in your
24 immediate family been charged with the offense
25 concerning murder within the last 12 months,

1 and you may just raise your hand?

2 Y'all approach one second.

3 (Bench conference outside the
4 hearing of the court reporter and
5 the jury.)

6 THE COURT: Let me ask all you folks
7 that answered they had read or heard something
8 about this case, can each of you set aside what
9 you've read or heard and decide this case based
10 on the evidence presented in this case? Can
11 all of y'all do that, or is there any of y'all
12 that cannot do that?

13 All right. And let me also tell you
14 this. What you may have heard or seen in the
15 newspapers or read may not be accurate. Do
16 each of you know that? Can each of you set
17 aside anything you've heard -- and I need y'all
18 to let me know if you can't -- and base your
19 verdict again on what is presented here in
20 trial? Can each of you do that? Is there
21 anybody that cannot do it?

22 All right. Ms. Brooks, do you have any
23 follow-up questions?

24 MS. BROOKS: Thank you, Your Honor.

25 Good morning. The Judge asked if you knew

1 the defendant. I'd like to know if you know
2 any of his family, which includes Felicia
3 Gardner, Michael Scott, Goldie Minora,
4 Lacrassia Gardner -- and I apologize. I may
5 have said that wrong, L-A-C-R-A-S-S-I-A -- or
6 Shawonda Hampton. Does anybody know any of
7 those folks?

8 PROSPECTIVE JUROR: Goldie Minora
9 lives in my neighborhood in east Montgomery. I
10 don't know him personally, but I've heard about
11 him.

12 MS. BROOKS: Would the fact that you
13 have heard about this person in any way affect
14 your ability to be fair?

15 PROSPECTIVE JUROR: No, it wouldn't.
16 No, it wouldn't.

17 MS. BROOKS: Thank you. And your name
18 for the record?

19 PROSPECTIVE JUROR: Kathy Green.

20 MS. BROOKS: Thank you, Ms. Green.

21 I think you were asked if you knew
22 Mrs. Benefield. Does anyone know her son or
23 knew her son, Travis Benefield?

24 Does anyone here live near or frequent
25 that Premium Package Store also known as Big

1 Al's?

2 There will be certain items that you may
3 be required to read or listen to. Does anybody
4 have a hearing or reading problem that would
5 make it difficult for you to be able to examine
6 that evidence?

7 Because of the nature of this case, it
8 involves the death of a human being, some of
9 the evidence may be graphic; for instance,
10 there might be a photograph that had blood on
11 it. Would the fact that there could be graphic
12 photographs or other evidence cause anyone here
13 not to be able to examine and consider all of
14 the evidence?

15 Some of us are taught to believe, as we
16 have in this country every right to believe,
17 that it is not right for one person to judge
18 another; for instance, judge not least you be
19 judged. Are there any of you who, because of
20 religious beliefs, moral training, would feel
21 uncomfortable sitting in a jury that would have
22 to judge the defendant's guilt or not? In
23 other words, everyone here could take this
24 responsibility and follow through based on the
25 facts and the law?

1 Does anyone here possess any personal bias
2 or prejudice against the Montgomery Police
3 Department, which is the investigating agency?
4 Does anybody have a personal bias or prejudice
5 for the police department?

6 Now, the Judge will give us the law in
7 this case. It's not what we've seen on
8 television. It's not what any of us lawyers
9 tell you it is. It's what the Judge says it
10 is. Can you follow the Judge's instruction on
11 the law even if it's contrary to what you
12 thought or what you believed?

13 Can you set aside what you've heard on CSI
14 and all of those other TV programs and
15 understand that we're going on the law of
16 Alabama in real life?

17 Now, the law says in the state of Alabama
18 in any criminal case that the State must prove
19 its case beyond a reasonable doubt. The State
20 does not have to prove its case beyond all
21 doubt. Does everyone understand that
22 difference?

23 Now, this is a serious case, capital
24 murder. Would anyone here require us to prove
25 the case beyond all doubt because it was a

1 serious case, more serious than, say, a theft
2 of property? You could follow the law?

3 Under the laws of the state of Alabama,
4 there is no legal distinction between an
5 accomplice to a crime and the principal to the
6 crime. That means if individuals agree to
7 commit a criminal offense, one defendant can be
8 held responsible for the actions of the other.
9 For example, if the facts showed that two
10 people participated in a murder, but only one
11 person actually fired the trigger and killed
12 the person, that both still could be found
13 guilty of murder? Is there anyone that feels
14 that an accomplice should not be held as
15 responsible for the actions of the other?

16 Does anybody here feel that life without
17 parole is too serious a punishment for someone
18 convicted of capital murder?

19 I think, if it's all right with the Court,
20 it would be wise for us to tell you that we are
21 not seeking the death penalty in this case. In
22 other words, it is a life-without-parole case.
23 That's why we ask you these questions.

24 Okay. Would anyone's feelings about life
25 without parole make it more difficult to find

1 the defendant guilty? Would it hinder you in
2 any way?

3 Is there any reason why any of you feel
4 you could not or should not serve in this
5 case? We do believe that it will last no more
6 than two days possibly and probably only one
7 day.

8 Thank you, Your Honor.

9 THE COURT: Thank you.

10 Mr. Belser, any follow-up questions?

11 MR. BELSER: No, Your Honor.

12 THE COURT: All right. Y'all approach
13 one second.

14 (The following occurred at the
15 bench outside the hearing of the
16 jury:)

17 THE COURT: Do we want to qualify the
18 jury for death?

19 MS. BROOKS: The State does not
20 request any questions about the death penalty.

21 MR. BELSER: No objection.

22 (Open court)

23 THE COURT: Ladies and gentlemen, let
24 me ask that you return to the jury assembly
25 room. And let me give you some rather specific

1 instructions. You are not to discuss this case
2 among yourselves or with anyone else, okay? It
3 probably should take us about 20 to 30 minutes
4 to strike a jury. I'm going to ask that you
5 stay here -- I mean, you can have a 15,
6 20-minute break, but do not leave the jury
7 assembly room until we get this jury struck.
8 All of you be back in that jury assembly room
9 at 12 o'clock, and hopefully, we'll let you
10 know who is going to be on this jury.

11 All right.

12 (Venire dismissed.)

13 MR. BELSER: I need to put something
14 on the record. Judge, Ms. Kathy Green, that's
15 Kathy Carter that I graduated with at college.
16 I don't think she recognized me, but I
17 certainly recognize her. Do you recall -- do
18 you remember Kathy Carter?

19 THE COURT: Do I remember her? Do you
20 remember Kathy Carter, Ms. Brooks?

21 MS. BROOKS: I know who the juror is.
22 I don't know her personally. Are you saying
23 that you've changed? Your hair has changed
24 such color, that you've changed so much
25 physically she didn't recognize you?

1 MR. BELSER: Apparently so.

2 THE COURT: What's her name now?

3 MR. BELSER: Kathy --

4 MS. HOLLIS: Green, I think, now.

5 MR. BELSER: Kathy Green. It's Kathy
6 C. Green.

7 MR. KIDD: I thought he was going to
8 say he was so much better looking today than he
9 was back then.

10 MR. BELSER: That's probably the
11 truth.

12 THE COURT: All right.

13 MR. BELSER: I just wanted to make
14 that known. She didn't make it known to the
15 Court.

16 MS. BROOKS: We appreciate that. We
17 do not challenge for cause on that one. Thank
18 you, David.

19 THE COURT: Now, we count 40 jurors.
20 Is that what y'all have got?

21 MR. KIDD: I had 42.

22 MS. BROOKS: Let me recount real
23 quickly.

24 THE COURT: I may have done it wrong.

25 MS. BROOKS: I think the Court may be

1 right. I think the Court is right.

2 MR. BELSER: I got 40.

3 THE COURT: That's a sufficient
4 number.

5 MR. KIDD: Forty.

6 THE COURT: Y'all get nine strikes
7 each.

8 MR. KIDD: That's going to leave us
9 with two alternates, correct?

10 THE COURT: Two alternates, yes. The
11 last two strikes will be the alternates, right?

12 MS. BROOKS: May we use the jury room
13 here?

14 THE COURT: Sure you can.

15 (Short recess.)

16 MS. BROOKS: Can I confirm, then, that
17 each side has 14 strikes and the last strike
18 for each side is an alternate?

19 LAW CLERK: I thought he said nine.

20 MR. BELSER: We've got 40. We need
21 14. If we both struck 14, that would be 28.

22 MR. KIDD: We need 28 people removed
23 to leave us with 12.

24 MS. BROOKS: And if you divide 28 by
25 two, that is 14.

1 MR. BELSER: Oh, I'm sorry. The last
2 two will be the alternates.

3 MR. KIDD: Yes. So that would be 14
4 strikes with the last one being an alternate or
5 the last one on each side being an alternate.

6 MR. BELSER: I didn't do well in math,
7 so I trust you.

8 MS. BROOKS: Is that not your
9 understanding?

10 LAW CLERK: I mean, that makes
11 mathematical sense.

12 MR. BELSER: He did say nine.

13 LAW CLERK: He did say nine.

14 MR. KIDD: That would be if we had 30
15 jurors.

16 MR. BELSER: Yes, it would be 14, last
17 two being the alternates. That's right. I
18 mean, the numbers are the numbers. Fourteen.

19 MS. BROOKS: The State excuses juror
20 number 6.

21 LAW CLERK: State strikes juror number
22 6.

23 MR. BELSER: Number 134.

24 LAW CLERK: Defense strikes 134.

25 MS. BROOKS: Number 15.

1 MR. BELSER: What was that?
2 MS. BROOKS: 15.
3 LAW CLERK: State strikes 15.
4 MR. BELSER: 100.
5 LAW CLERK: Defense strikes 100.
6 MS. BROOKS: 102.
7 LAW CLERK: State strikes 102.
8 MR. BELSER: 79.
9 LAW CLERK: Defense strikes 79.
10 MS. BROOKS: Number 88.
11 LAW CLERK: State strikes 88.
12 MR. BELSER: 35.
13 LAW CLERK: Defense strikes 35.
14 MS. BROOKS: 124.
15 LAW CLERK: State strikes 124.
16 MR. BELSER: 28.
17 LAW CLERK: Defense strikes 28.
18 MS. BROOKS: 120.
19 LAW CLERK: State strikes 120.
20 MR. BELSER: Eight.
21 LAW CLERK: Defense strikes eight.
22 MS. BROOKS: 161.
23 LAW CLERK: State strikes 161.
24 MR. BELSER: 65.
25 LAW CLERK: Defense strikes 65.

1 MS. BROOKS: 167.
2 LAW CLERK: State strikes 167.
3 MR. BELSER: 112.
4 LAW CLERK: Defense strikes 112.
5 MS. BROOKS: 156.
6 LAW CLERK: State strikes 156.
7 MR. BELSER: What was that number?
8 LAW CLERK: 156.
9 MR. BELSER: 42.
10 LAW CLERK: Defense strikes 42.
11 MS. BROOKS: 82.
12 LAW CLERK: State strikes 82.
13 MR. BELSER: 117.
14 LAW CLERK: Defense strikes 117.
15 MS. BROOKS: 165.
16 LAW CLERK: State strikes 165.
17 MR. BELSER: 163.
18 LAW CLERK: Defense strikes 163.
19 MS. BROOKS: 192.
20 MR. BELSER: 193.
21 LAW CLERK: State strikes 192. The
22 defense strikes 193.
23 MS. BROOKS: 128.
24 LAW CLERK: The State strikes 128.
25 MR. BELSER: 178, I think. Yeah,

1 178.

2 LAW CLERK: Defense strikes 178.

3 MR. BELSER: What was the State's last
4 strike?

5 LAW CLERK: 128.

6 MS. BROOKS: 39.

7 LAW CLERK: State strikes 39.

8 MR. BELSER: 61.

9 LAW CLERK: Defense strikes 61.

10 I have 4 --

11 MS. BROOKS: Hang on just a second, if
12 you don't mind.

13 (Brief pause.)

14 MS. BROOKS: Thank you.

15 LAW CLERK: I have 4. I believe
16 that's 13, 19, 41 --

17 MR. KIDD: Hold on a second. 4, 13,
18 19, 41?

19 LAW CLERK: Yes.

20 MR. KIDD: Okay.

21 LAW CLERK: 47, 89, 109, 137, 157,
22 159, 172 and 186. The two alternates are 39
23 and 61.

24 MR. BELSER: 172 and what?

25 LAW CLERK: 186.

1 MR. BELSER: Who struck 165?

2 MS. PERKINS: State. Strike 11.

3 MR. BELSER: That was y'all's?

4 MS. PERKINS: Yes.

5 MR. BELSER: I didn't get it down.

6 THE COURT: Y'all ready, ready to get
7 them? I'm just going to give them some
8 instructions not to listen to the news and
9 everything.

10 (The following occurred in the
11 presence of the jury:)

12 THE COURT: All right. Y'all can be
13 seated.

14 Ladies and gentlemen, I'm going to swear
15 y'all in when you get back. But let me give
16 you some instructions regarding the press.
17 This may very well be on TV or the radio news
18 or something you may hear. So during -- while
19 you're in this courtroom and while you're at
20 this trial, I do not want you listening to any
21 TV or radio news or reading any newspaper
22 concerning this case, okay? So don't even
23 listen to any local news until this case is
24 over, all right? Now, y'all understand that?

25 MS. BROOKS: Judge, could we ask they

1 not go by the scene either?

2 THE COURT: Okay. Do not go by the
3 scene or inspect anything on your own and don't
4 look at any books or law books trying to figure
5 out what a definition is. I had somebody do
6 that one time and had to declare a mistrial
7 because they went and read something or looked
8 at something they shouldn't have, okay? The
9 evidence that you will get will come from this
10 witness right over here, the witnesses that
11 will testify or any exhibits that are
12 introduced, okay? So do any inspect or do
13 anything on your own. Do not listen to TV or
14 radio news, local news while this is pending,
15 okay? And we will see you back at -- I usually
16 give you an hour and a half -- two o'clock.
17 Okay. Thank y'all.

18 (The following proceedings
19 occurred outside the presence of
20 the jury:)

21 THE COURT: Thank y'all. We'll see
22 you back at two o'clock.

23 (Lunch recess.)

24 (The following occurred in the
25 presence of the jury:)

1 THE COURT: Y'all be seated. The jury
2 stands up. I've got to swear you in. Raise
3 your right hand.

4 (The jury was qualified, struck,
5 placed in the jury box and
6 administered the oath of
7 service.)

8 THE COURT: All right. Y'all ready to
9 proceed?

10 MS. BROOKS: Yes.

11 MR. BELSER: Yes, sir.

12 THE COURT: I'm going to give y'all an
13 opening charge real quick. It won't take
14 long.

15 Ladies and gentlemen, before we start the
16 trial of this case, I need to briefly explain
17 the procedures and the duties of the Court and
18 the jury.

19 First of all, as trial judge, it is my
20 duty to ensure the orderly conduct of the
21 trial, rule on questions of law as they arise
22 from time to time; and at the conclusion of the
23 trial, instruct you on the law as it applies to
24 this case.

25 You, as the jury, are the sole and

1 exclusive judge of the facts. It is your duty
2 to listen to the evidence and from it determine
3 the true facts and then apply the law of this
4 case as given to you by the Court to the facts
5 as you find them to arrive at a true verdict.

6 The procedure that will be followed is,
7 first, counsel for the State will make an
8 opening statement, and then counsel for the
9 defendant will respond. Each side will be
10 confined to a statement of what they expect the
11 evidence to show. These statements are not
12 evidence but are given to familiarize you with
13 the case. Following opening statements,
14 evidence will be presented by witnesses and
15 perhaps by exhibits.

16 The attorneys may at times make
17 objections, and I will rule on the
18 admissibility of the testimony and other
19 evidence. You must not concern yourself with
20 the reasons for my rulings, since they are
21 controlled and required by law; and you're not
22 to speculate as to possible answers to
23 questions which are not required to be
24 answered. Additionally, the overruling of
25 objections is not intended to indicate the

1 weight to be given such evidence.

2 Following the close of the evidence, the
3 attorneys will again address you and make
4 closing arguments. They will discuss the
5 evidence and all reasonable inferences to be
6 drawn to help guide you to a true and just
7 verdict.

8 In order to assist you in your duties, it
9 should be pointed out to you what is and what
10 is not evidence. First, the arguments and
11 statements of counsel are not evidence.
12 Rulings of the Court are not evidence. The
13 indictment is not evidence. Evidence is
14 testimony of witnesses under oath from the
15 witness stand and any physical evidence or
16 exhibits which are admitted and any
17 presumptions of law given to you by the Court
18 in the closing charge.

19 We will be taking breaks about every 45
20 minutes, and we'll probably take a lunch break
21 around noon if we go into tomorrow. That's
22 just so you can plan your schedule. That's
23 what I try to do. It doesn't always happen.

24 Let me also remind you of your conduct
25 outside the courtroom. I told you once already

1 about the press. Those instructions I gave you
2 about the press, reading the newspaper, radio
3 or TV are what you are to do until this case is
4 over, okay? You're not to read or listen to or
5 view any press on this case. If you should
6 hear something or should somebody tell you
7 something, I need to know what was said, okay,
8 and what you heard.

9 All right. If you see some of these folks
10 out in the hall, family members, witnesses and
11 so on, and they are rude to you or you think
12 they're rude to you, they can have no contact
13 with a juror, but they're not being rude. They
14 can't talk to you or -- they will probably shut
15 the elevator door on your face. They're not
16 being rude, okay?

17 What else do I need to tell you? Is that
18 about it? Anything else? All right. Thank
19 y'all.

20 All right, Ms. Brooks. Mr. Kidd.

21 MR. KIDD: Judge, if it pleases the
22 Court, defense counsel, good afternoon, ladies
23 and gentlemen. Ladies and gentlemen, my name
24 is Michael Kidd. I'm a full-time prosecutor
25 here in Montgomery County. Ms. Brooks sitting

1 here is my boss. And we're here today to talk
2 about a crime that was committed on Labor Day
3 of 2001, September the 3rd.

4 During that time, there was a business
5 located here in Montgomery County. It was
6 located over off Adams Avenue. The name of
7 that business was Premium Package Store.
8 You'll see this later on identified as State's
9 Exhibit Number 3. This is Premium Package.

10 As you can tell, it's a small business.
11 It's a family-owned business. This business
12 has been in existence in this same location for
13 35 years. This business is located at the
14 heart and soul of Tulane Court. It's a local
15 housing project here just a few blocks from the
16 courthouse.

17 Ladies and gentlemen, the evidence in this
18 case is going to show that it was a Labor Day
19 holiday, that most people in the community were
20 having parties and cook-outs. They were eating
21 barbecue. The testimony will be that Ray
22 Davis, who is seated here at counsel table in
23 the blue denim shirt, and his friend, Travis
24 Benefield -- Mr. Benefield is not in the
25 courtroom with us. Mr. Benefield is deceased,

1 but representing Mr. Benefield is his mother,
2 Robin -- the two of them were not at home
3 enjoying Labor Day with their families. They
4 weren't at home cooking barbecue or watching
5 football on television. They were at Premium
6 Package.

7 Premium Package did not close on Labor
8 Day. It stayed open serving the people in that
9 area, sold adult beverages. They sold just
10 about everything. It's kind of a lifeline to
11 Tulane Court and that area. A lot of folks
12 would come, and they would walk in and out of
13 the store. And as you can imagine, being a
14 holiday and state beverage stores being closed,
15 it was a very busy day for Premium Package.

16 Ladies and gentlemen, it had gotten well
17 into the evening, 7:30, eight o'clock. Ray
18 Davis was there with his friend,
19 Mr. Benefield. And all while they had been
20 there during the day, there were things going
21 on there in Tulane Court.

22 I believe there's going to be testimony
23 that there was a cook-out or a party going on
24 at an individual's house, a female named
25 Bridgette Williams. I believe also there will

1 be some testimony that her son was an
2 individual named Tawaskie Williams. He may be
3 referred to as his street name, Solo. But
4 Tawaskie Williams, the defendant in this case,
5 Mr. Willie Gardner -- Mr. Gardner is seated
6 right here in his Polo Sport T-shirt, sweat
7 shirt -- another individual by the name of
8 Delano Smith. I believe his street name was --
9 his nickname was Pop. Let me put this up just
10 for reference. Willie Gardner, the defendant;
11 Delano Smith, another individual goes by the
12 name of Pop, his street name; a third
13 individual by the name of Anthony Fuller; and
14 then finally, Taurus Hall, a fourth
15 individual. These guys, along with Tawaskie
16 Williams, were there at this cook-out. They
17 were shooting dice. They were playing a game
18 of dice.

19 And I expect the evidence is going to show
20 that during the course of that dice game,
21 Delano Smith or Pop started making comments
22 about how he wanted to go and rob either Big
23 Al's or Premium Package. I believe the
24 testimony is going to be that Premium Package
25 had previously been known as Big Al's. The

1 name had changed a few years before. But as in
2 some cases, a lot of the people that had been
3 in that community for a long time continued to
4 refer to that business as Big Al's, although
5 the official name was Premium Package.

6 But Delano Smith started talking about
7 robbing Big Al's. He started soliciting
8 individuals to help him. He turned to Willie
9 Gardner and said, Willie, do you want to go hit
10 a lick? Let's go up in Big Al's. And Willie
11 Gardner, the defendant here, was in agreement
12 to do that. They also looked for additional
13 help.

14 They turned to Anthony Fuller, who was at
15 the dice game. They got Anthony Fuller on
16 board. They turned to Tawaskie Williams, the
17 individual known as Solo, and they asked
18 Tawaskie to participate. I believe the
19 testimony is going to be that Tawaskie decided
20 that he did not want any part of this and told
21 them that, no, I'm not dealing with that. I'm
22 not going to go in and rob anybody.

23 So, finally, they turn to the fourth
24 individual, Taurus Hall. I believe the
25 testimony will be that he is known as Big Bug

1 and that these four guys begin to conspire to
2 plan out and to determine how they would in
3 fact rob Premium Package or Big Al's.

4 Now, ladies and gentlemen, the key thing
5 in this is going to be during the course of
6 this planning while these four individuals were
7 agreeing to do the same thing, the one thing
8 that was evident, the one thing that was talked
9 about, the one thing that was known to all four
10 that were involved is that when they hit that
11 door of Premium Package, they were going to be
12 armed and they were going in there to shoot,
13 and not just to shoot. They were going in
14 there for the purpose of robbing Premium
15 Package and to execute and to kill Travis
16 Benefield and Ray Davis.

17 Now, ladies and gentlemen, the testimony
18 is going to show that these four guys went into
19 Premium Package. Prior to going to Premium
20 Package, they changed clothes to conceal their
21 identity. They put du-rags or handkerchiefs
22 over their face so they couldn't be seen. They
23 loaded themselves up with two handguns, high
24 capacity pistols that would shoot several
25 times, large caliber pistols, a nine millimeter

1 they also knew that there was a surveillance
2 tape.

3 And I believe the evidence will be that
4 the plan was that Delano Smith was going to
5 take care of Travis Benefield, that Willie
6 Gardner was going to take care of Ray Davis and
7 take him back and get the videotape and the
8 money that was in the office; and that Anthony
9 Fuller, the third individual, was going to be
10 the bag man. He's the guy collecting all the
11 money. And then, finally, Taurus Hall is going
12 to be the lookout. He's going to be the guy
13 that stood outside that told the rest of them
14 when it was okay to come in, when the best
15 opportunity would be to strike.

16 Ladies and gentlemen, you're going to see
17 firsthand what happened in that store because
18 the plan did not exactly go off the way they
19 had intended. You see, ladies and gentlemen,
20 when they hit that door with guns blazing, they
21 got Ray Davis -- or Willie Gardner got Ray
22 Davis up off the floor, and he marched him to
23 the back of the store while Delano Smith stood
24 over Travis Benefield and Anthony Fuller stood
25 there getting all the money out of the

1 register. But in a split second, when Willie
2 Gardner got Ray Davis to the back of that
3 store, Ray wasn't moving quite fast enough for
4 Willie.

5 So what does Willie do? He takes the gun,
6 and he discharges the gun into the floor. At
7 that point in time, Ray Davis had to make a
8 decision. What am I going to do? So just
9 acting on instincts alone, he put his keys in
10 the door, he popped the door open and jerked
11 the door to the office open, and he was able to
12 get inside and throw the door latch before
13 Willie Gardner could get in.

14 But ladies and gentlemen, during that
15 process, Willie Gardner turned that gun on Ray
16 Davis, and he started shooting. He shot Ray
17 Davis two times. One bullet went through his
18 arm and into his stomach. The second was a
19 straight on shot into his stomach. But Ray was
20 able to flip the bolt on that door and to
21 prohibit Willie Gardner from coming in.

22 Ladies and gentlemen, after that door was
23 locked, Willie Gardner ran to the front of the
24 store where they continued to get money and
25 guns, because there were some guns in the store

1 that were taken as well.

2 They finished their business there.
3 Delano Smith came out from behind the counter.
4 He went to the back of the store and tried to
5 open the office, saw that it was locked, wiped
6 his fingerprints off the door, and the three --
7 or the four of these guys left together with an
8 amount of currency and a couple of handguns.

9 Now, ladies and gentlemen, the problem for
10 Willie Gardner in this case to start with was
11 that they grew up in that community. They have
12 visited that store on a regular basis. Ray
13 Davis, the gentleman sitting right here, was
14 very familiar with all four of these
15 individuals. And that Ray Davis was able to
16 identify -- even though there was a
17 handkerchief across his face, was able to
18 identify Willie Gardner as being the guy that
19 turned the gun on him and shot him on two
20 occasions.

21 The second problem was the plan
22 was videotaped. Willie Gardner was never able
23 to get inside the office where the videotape
24 was running. Ladies and gentlemen, you won't
25 have to take my word for it. You won't have to

1 take Ray Davis's word for it. You can watch
2 yourself live and in person how this robbery
3 was performed. You'll actually see the
4 surveillance videotape. And what you will see
5 in that videotape is horrifying, because when
6 all of this was going on with Ray Davis in the
7 back of that store, Delano Smith took the gun
8 that he had while Travis Benefield was laying
9 helplessly on the floor, pointed the gun to the
10 back of his head in execution style, put two
11 rounds in the back of Travis Benefield's head,
12 taking his life. You'll see it yourself.

13 Ladies and gentlemen, within moments of
14 the robbery, the police department was there.
15 They began their investigation. They sent an
16 officer to the hospital where they were
17 administering life-saving treatment for the
18 injuries that Ray Davis sustained. While Ray
19 Davis was waiting to go into the operating
20 room, he gave them the name of Wet Willie.
21 Ladies and gentlemen, Wet Willie is Willie
22 Gardner.

23 From that point, the police continued
24 their investigation. Later on, and as the
25 evening turned into the morning hours, they

1 were able to go and arrest Willie Gardner for
2 capital murder. Initially, Willie Gardner gave
3 them an alibi. He said, I was with my
4 girlfriend. But later on, I believe the next
5 day, he got word to detectives that he wanted
6 to talk to them again. He wanted to tell them
7 the truth.

8 I believe the evidence will be that a
9 couple of detectives from the police department
10 went down, they got Willie Gardner, and they
11 took him back to the police station. And
12 Willie Gardner sat down and gave them a full
13 statement, which was videotaped.

14 In that statement, he told them about the
15 plan to rob. He told them that he was the one
16 that went into the store. They sit down. They
17 showed him the videotape. He mitigated his
18 involvement in it, but he confessed to this
19 crime.

20 Ladies and gentlemen, that's going to be
21 the facts of this case.

22 What you're also going to hear is that
23 Willie Gardner has pled guilty in this case.
24 Now, you may be asking yourself if he has pled
25 guilty, then why are we here? Well, ladies and

1 gentlemen, in the state of Alabama when an
2 individual is charged with capital murder -- in
3 the state of Alabama, we have several different
4 types of murder. We have intentional murder.
5 We have felony murder, but then we have capital
6 murder, which is the most serious. And simply
7 put, capital murder is when an individual
8 commits a felony offense and during the course
9 of that felony offense, he intentionally takes
10 the life of another person.

11 Now, on this particular case, the felony
12 offense that we're referring to is robbery,
13 robbery in the first degree. That's robbery
14 committed by the use of a gun. And during the
15 course of that robbery, either Willie Gardner
16 or someone that he was in complicity with,
17 that's someone he was an accomplice with, the
18 Judge is going to tell you, in the State of
19 Alabama, we recognize no distinction between
20 the principal or the person pulling the trigger
21 or someone who was his accomplice, who was
22 there willing and participating in the crime.
23 But during the course of a robbery, someone
24 that was participating in that course of the
25 robbery took the life of Travis Benefield.

1 Ladies and gentlemen, you'll hear evidence
2 that Willie Gardner has pled to that case or
3 has pled to that offense. And with it being
4 capital murder, even on a guilty plea, the
5 State of Alabama still has to put on a case,
6 and you as jurors have to come back with a
7 verdict.

8 The Judge is going to instruct you on the
9 law, and he's going to tell you that the things
10 that you are to consider is the testimony that
11 comes from this witness stand. Now, ladies and
12 gentlemen, you'll hear from live witnesses.
13 You'll hear from Ray Davis. You'll hear from
14 the case agent, Keith Barnett. But in addition
15 to that, the Judge is going to give you some
16 instructions on stipulations. Stipulations are
17 basically things that the State of Alabama and
18 the defense agree on as how they took place.
19 You will hear the stipulations from a number of
20 witnesses. The Judge is going to instruct you
21 that you are to treat that testimony or that
22 stipulation just as if they were testifying
23 before you in person.

24 Ladies and gentlemen, what I'm going to
25 ask you to do is I'm going to ask you to listen

1 to the evidence that comes to you from these
2 witnesses. I'm going to ask you to look at the
3 exhibits, the videotapes that you'll see, the
4 photographs that you'll see. I'm going to ask
5 you to listen to the stipulations. And at the
6 close of all that testimony, I'm going to ask
7 you to return a verdict of guilty against
8 Willie Gardner for capital murder, the same
9 crime that he has pled guilty to.

10 Thank you very much.

11 MR. BELSER: Judge, the defense will
12 stipulate that we're not going to make any
13 opening remarks at this time.

14 THE COURT: All right.

15 MS. BROOKS: The State calls as its
16 first witness, Ray Davis.

17 RAYMOND DAVIS

18 The witness, having first been duly sworn
19 to speak the truth, the whole truth and nothing but
20 the truth, took the stand and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. BROOKS:

23 Q. Ray, would you tell everybody your name?

24 A. Raymond Davis.

25 Q. And do you still live here in Montgomery?

1 A. Yes, ma'am.

2 Q. Back on September the 3rd, 2001, Labor Day, did
3 you live here?

4 A. Yes, ma'am.

5 Q. Did you work here?

6 A. Yes, ma'am.

7 Q. Where?

8 A. Premium Package Store, also known as Big Al's.

9 Q. Where is that?

10 A. On Adams Avenue right in front of Tulane Court.

11 Q. Is that in Montgomery County, Alabama?

12 A. Yes, ma'am.

13 Q. How long had you worked there?

14 A. At that time, three years.

15 Q. Was it a family-owned business?

16 A. Yes, ma'am.

17 Q. And is it a business that had been there about
18 30 or 35 years?

19 A. Yes, ma'am.

20 Q. At the time, did you have a wife, kids?

21 A. Yes, ma'am.

22 Q. How old are you, do you mind?

23 A. I'm 25.

24 Q. Twenty-five now?

25 A. Yes, ma'am.

1 Q. Back on the occasion of Labor Day of 2001 when
2 you were at work, was anybody else there with
3 you?

4 A. Yes, ma'am.

5 Q. Who?

6 A. Travis Benefield.

7 Q. Who is Travis Benefield?

8 A. A friend of mine, co-worker, currently
9 deceased.

10 Q. Was he about your age?

11 A. Yes, ma'am.

12 Q. Had you known him long?

13 A. The entire time I had worked at Premium
14 Package.

15 Q. You mentioned that's in front of Tulane Court?

16 A. Yes, ma'am.

17 Q. Is there a wall that separates the store and
18 the parking lot from Tulane Court itself?

19 A. Yes, ma'am.

20 Q. Do you know a fellow named Wet Willie?

21 A. Yes, ma'am.

22 Q. How did you know him?

23 A. He was a regular customer in the store. He
24 would come in and buy sodas, stuff like that.

25 Q. Do you recognize the name Pop?

1 A. Yes, ma'am.

2 Q. How do you know him?

3 A. He was also a regular in the store.

4 Q. Prior to that Labor Day, had there been any
5 difficulties, to your knowledge, about Pop or
6 Wet Willie and the store?

7 A. I knew there had been some animosity as far as
8 them hanging on the lot, us having to ask them
9 to leave, stuff like that.

10 Q. Were they under age for drinking?

11 A. Yes, ma'am.

12 Q. What does your store primarily sell?

13 A. Alcoholic beverages.

14 Q. Was there a bar in there, some stools that
15 people could actually drink at?

16 A. Yes, ma'am.

17 Q. About eight o'clock that night, who was
18 working?

19 A. Me and Travis.

20 Q. All the other -- the owners and the other
21 clerks had gone?

22 A. Yes, ma'am.

23 Q. Do you know a fellow named Taurus Hall?

24 A. Yes, ma'am.

25 Q. Had you seen him that night?

1 A. Yes, ma'am.

2 Q. After he left, what happened?

3 A. He come in, bought a pack of cigarettes, left,
4 and then three people entered the store with
5 guns, starting shooting. Travis got shot twice
6 in the side.

7 Q. How do you know that?

8 A. When everything happened, we both hit the
9 ground and Travis said that he had been hit.
10 And I said, where? And he said, in the side.
11 And he moved his shirt up a little bit, and I
12 saw the pool of blood.

13 Q. Could you tell anything about how these three
14 men were dressed?

15 A. They were all wearing primarily dark clothes,
16 had masks covering the lower part of their
17 face.

18 Q. When they first came in, how were they acting?
19 What were they doing?

20 A. There was a lot of screaming, a lot of
21 hollering, telling us to shut up, you know.

22 Q. What was said before Travis was actually shot
23 that first time?

24 A. When they first came around the counter, he
25 told them, he said, take whatever you want,

1 just don't kill us.

2 Q. And was this before he was shot or after?

3 A. This was before he was killed.

4 Q. Before he was killed?

5 A. Yes, ma'am.

6 Q. What I'm trying to understand is you said three
7 men came into the store. Now, when they came
8 in, did you see any guns?

9 A. Yes, ma'am, as soon as the door opened, they
10 come through with guns firing.

11 Q. Firing. Okay. And that's when Travis was
12 initially hit in the side?

13 A. Yes, ma'am.

14 Q. But he didn't pass out right then?

15 A. No, ma'am.

16 Q. He was able to tell you what?

17 A. That he had been hit in the side.

18 Q. And then you said he said something else to
19 somebody who had a gun on him?

20 A. Yes, ma'am.

21 Q. What did he say?

22 A. He said, take whatever you want, just don't
23 kill us.

24 Q. What happened while he was begging?

25 A. They come around, got me off the floor, told me

1 to go into the back room, open up the safe.

2 Q. Did anybody go with you?

3 A. Yes, ma'am.

4 Q. Who?

5 A. Wet Willie.

6 Q. How do you know who it was?

7 A. Because when he came in and got me up off the
8 floor, I got a good look at his face, and I was
9 able to recognize him.

10 Q. And he told you to go where?

11 A. Go to the back of the store and open up the
12 safe.

13 Q. What's in the back of that store?

14 A. The office.

15 Q. And by office, could you describe it generally
16 for us?

17 A. It's about a five foot by 10 foot enclosed area
18 where the store safe, records were kept.

19 Q. Was it -- have a door on the office?

20 A. Yes, ma'am.

21 Q. Was it kept open or locked?

22 A. It was kept locked.

23 Q. Did you have a key?

24 A. Yes, ma'am.

25 Q. There's a safe. Do you mean a safe like we

1 normally think of one?

2 A. Yes, ma'am. It was probably about five foot
3 high, about 350, 400 pound safe.

4 Q. What was kept in that safe?

5 A. The store money, store records.

6 Q. Did the store ever use cash in its business to
7 check -- to cash checks?

8 A. Yes, ma'am.

9 Q. Is that a primary source of income?

10 A. Yes, ma'am.

11 Q. And in that office, was there any surveillance
12 equipment?

13 A. Yes, ma'am.

14 Q. What?

15 A. There was a camera inside the office. There
16 was the VCR and there was also the monitor.

17 Q. So this surveillance camera actually recorded
18 what you could see through the cameras?

19 A. Yes, ma'am.

20 Q. And you could see -- watch on the monitor as
21 well?

22 A. Yes, ma'am.

23 Q. The -- when you went back to the store -- to
24 the office in the back of the store, describe
25 what happened.

- 1 A. I got back to the office, was trying to get my
2 keys off my side to unlock the door.
3 Obviously, I wasn't moving quick enough for his
4 likings, and he discharged the weapon into the
5 ground close to my feet. And I said, hold on a
6 minute, you know. I got the keys off my side,
7 got the door unlocked. And when I got the door
8 unlocked, I slipped inside. And as I was
9 slipping inside, I was shot, got the door
10 closed, couldn't get it to lock. The door was
11 snatched open again and was shot an additional
12 time and finally got the door to close, locked
13 the door, picked up the phone and called 911.
- 14 Q. Okay. You called for help?
- 15 A. Yes, ma'am.
- 16 Q. And were you able to get someone on 911?
- 17 A. Yes, ma'am.
- 18 Q. Did you stay on that line until help arrived?
- 19 A. Yes, ma'am.
- 20 Q. From that moment that you left the front of the
21 store where you had heard your friend Travis
22 begging not to be shot again until now, have
23 you seen Travis again?
- 24 A. No.
- 25 Q. To your knowledge, he died there at the scene?

1 A. Yes, ma'am.

2 Q. Was money missing from the store after this
3 night?

4 A. To my knowledge, yes, ma'am.

5 Q. And there were some guns kept in the store,
6 weren't there?

7 A. Yes, ma'am.

8 Q. What about Travis, did he have a gun?

9 A. Yes, ma'am.

10 Q. What was it for?

11 A. Personal protection.

12 Q. Were there any guns kept up under the counter
13 where the registers were?

14 A. Yes, ma'am.

15 Q. And were any guns missing that night?

16 A. Yes, ma'am.

17 Q. When the police got there, did the paramedics
18 attempt to treat you?

19 A. Yes, ma'am.

20 Q. And then were you transported to the hospital?

21 A. Yes, ma'am.

22 Q. Would you share with the ladies and gentlemen
23 of the jury where were you shot? You don't
24 have to show us the marks.

25 A. Was shot once in the right forearm, then

1 received multiple gunshot wounds to the
2 abdomen, two or three times.

3 Q. The forearm, did you have any loss of use of
4 that arm?

5 A. Yes, ma'am.

6 Q. Explain that.

7 A. When it first happened, naturally, they put it
8 in a cast. When they removed the cast, I had
9 probably about 30 percent use of it. I had no
10 strength in it. Then, gradually, as time
11 progressed on, I managed to get some of the use
12 back. I'm still not at one hundred percent
13 with it.

14 Q. And what about the wounds to your abdomen, did
15 they require any surgery?

16 A. They did, yes, ma'am.

17 Q. How many surgeries have you had?

18 A. Four altogether.

19 Q. Did you lose any of your guts?

20 A. Yes, ma'am. I lost 70 percent of my large
21 intestines, 10 percent of my small intestines.
22 A bullet grazed my liver. I suffered
23 contusions to my heart and lung.

24 Q. For a period of time as a result of what
25 happened to you, did you have to wear any kind

1 of special equipment?

2 A. Yes, ma'am. I had to be equipped with a
3 colostomy bag.

4 Q. You're recovering now from those injuries?

5 A. Yes, ma'am.

6 Q. After you called for help and you went to the
7 hospital, before you went into surgery, do you
8 remember a police officer asking you briefly
9 about what happened?

10 A. Yes, ma'am.

11 Q. Were you able to tell him any of the names of
12 the people that night?

13 A. One of them.

14 Q. Who was that?

15 A. That was Wet Willie.

16 Q. After that night, you began recovering from
17 what happened. About, gosh, a year, year and a
18 half later, did you go back to Baptist Hospital
19 to have a further procedure done?

20 A. Yes, ma'am.

21 Q. Okay. Specifically, I think it was around
22 April, 1st of April of 2002?

23 A. Yes, ma'am.

24 Q. Something happened. You felt something in your
25 back?

1 A. Yes, ma'am.

2 Q. Tell us about that.

3 A. I had noticed a small bump located on my --
4 right around my kidney area, and I didn't think
5 nothing of it. And as it progressed on, I took
6 my binder off one night, was getting ready to
7 get a shower. And I told my wife, I said, we
8 need to go to the emergency room. And she said
9 why. And I said the bullet -- that one of the
10 bullets that was lodged inside of me has worked
11 its way out. And I went to Baptist Medical
12 Center that night and had it removed.

13 Q. They removed that bullet?

14 A. Yes, ma'am.

15 Q. Handed it to you?

16 A. Yes, ma'am.

17 Q. Were you conscious when they took it out?

18 A. Yes, ma'am.

19 Q. And what did you do with it?

20 A. I wrapped it up in gauze, put it in a pill
21 bottle and turned it over to Montgomery Police
22 Department.

23 Q. Do you know a detective named E. E. Howton,
24 Geno Howton?

25 A. Yes, ma'am.

1 Q. Is that who you gave it to?

2 A. Yes, ma'am.

3 Q. Did you do anything to it to change its
4 appearance in any way?

5 A. No, ma'am.

6 Q. Let me begin by showing you State's Exhibit 2
7 and ask if you recognize what that appears to
8 be a sketch of?

9 A. Yes, ma'am. That appears to be a sketch of the
10 layout of the package store.

11 Q. Okay. I always do this backwards. I'm sorry.
12 If you'll direct me, I'll do the pointer, and
13 we'll start here at the top where it's labeled
14 421 Yougene Curve, R-1 and wall. Do you see
15 that?

16 A. Yes, ma'am.

17 Q. Now, go to the opposite end where there is an
18 opening.

19 A. Yes, ma'am.

20 Q. Are you familiar with what that is?

21 A. Yes, ma'am. That would be the front of the
22 store, the front door.

23 Q. And then to the left where these R numbers are
24 around this rectangular block, what would that
25 represent?

1 A. That would represent the counter and the bar.

2 Q. And where would Travis have been at the time
3 that he was shot?

4 A. On the back side of it towards the left-hand
5 side.

6 Q. In this area where it's labeled -- all these R
7 numbers are?

8 A. Yes, ma'am.

9 Q. And you said you were taken to the back down
10 the hall?

11 A. Yes, ma'am.

12 Q. Where would that be?

13 A. Follow from where Travis would have been
14 laying.

15 Q. Okay.

16 A. Down the back.

17 Q. Okay.

18 A. Over to the right and then down that little
19 hallway right there.

20 Q. Am I going the right way?

21 A. Yes, ma'am.

22 Q. Right here would be the storage area. Over
23 there would be the office where it says R-20?

24 A. Yes, ma'am.

25 Q. And that's where you ended up calling for help?

1 A. Yes, ma'am.

2 Q. Okay. The store -- just to make sure we're all
3 talking about the same place -- is State's
4 Exhibit 3. Can you see that?

5 A. Yes, ma'am.

6 Q. Is that the same store we're talking about?

7 A. Yes, ma'am.

8 Q. Okay. And the signage says Premium Package
9 Store, but it was also called Big Al's?

10 A. Yes, ma'am.

11 Q. Is that the front door that you can see on the
12 other side of the vehicle?

13 A. Yes, ma'am.

14 THE COURT: That's here in Montgomery
15 County on what street again?

16 THE WITNESS: Adams Avenue.

17 THE COURT: And that's Montgomery
18 County?

19 THE WITNESS: Yes, sir.

20 Q. Let me show you what's marked as State's
21 Exhibit 1 -- State's 1 -- State's 1 and ask you
22 if this looks like the type of tape that was
23 the surveillance tape?

24 A. Yes, ma'am.

25 Q. Okay. You weren't there when the police took

1 it, were you?

2 A. No, ma'am.

3 Q. You mentioned you called 911. They record
4 those calls. State's Exhibit 20, does that
5 appear to be your 911 call?

6 A. Yes, ma'am.

7 Q. I just cut the top of the label off an item,
8 State's 32 labeled B-1. Do you see that?

9 A. Yes, ma'am.

10 Q. It has some other identifying information on
11 it. I'm going to open it up. And there's
12 another envelope, and I'm going to open that.
13 And inside that envelope is another envelope,
14 and it has the date of April the 3rd, '02?

15 A. Yes, ma'am.

16 Q. And it's labeled projectile from Raymond
17 Davis. That's you?

18 A. Yes, ma'am.

19 Q. Okay. I'm going to open that up. And inside
20 appears to be a bullet. Does that look like
21 what came out of your back?

22 A. Yes, ma'am.

23 Q. The law requires, Ray, that we prove that the
24 person who is dead is the person you've been
25 talking about. So I'm going to show you a

1 picture that's marked as State's Exhibit 13 and
2 ask you who is that?

3 A. That would be Travis Benefield.

4 Q. Okay. Thank you, Ray. The last question we
5 have is the man you referred to as Wet Willie,
6 Willie Gardner, is he in the courtroom?

7 A. Yes, ma'am.

8 Q. Could you describe where he is and what he's
9 wearing?

10 A. He is sitting to the right-hand side of me. He
11 is wearing a pair of khaki pants and a dark
12 blue shirt.

13 MS. BROOKS: Thank you, Ray. That's
14 all we have.

15 MR. BELSER: No questions, Your Honor.

16 THE COURT: Thank you, sir.

17 (The witness was excused
18 from the witness stand.)

19 MS. PERKINS: We're going to go
20 through -- next is going to be the stipulation
21 of Tawaskie Williams. Tawaskie Williams is 18
22 years old, and his nickname is Solo. He knows
23 the defendant seated over here at counsel table
24 as Willie Gardner, and he would have identified
25 Willie Gardner as being Wet Willie if he were

1 in the courtroom today. He also knows his
2 co-defendants, Delano Smith. He knows him as
3 Pop. Anthony Fuller, he knows him as Ant; and
4 Taurus Hall, he knows him as Big Bug.

5 Days before the shooting, Tawaskie heard
6 Willie Gardner, Wet Willie, Pop all talking
7 about robbing the Premium Package Store that
8 everybody commonly refers to in that
9 neighborhood as Big Al's.

10 Tawaskie Williams would have identified
11 State's Exhibit 3 as being Big Al's, that he
12 heard the defendant Pop and Ant talking about
13 robbing.

14 On September 3rd of 2001, which was the
15 date of this robbery and murder, Tawaskie, Wet
16 Willie, Pop and Ant were at a dice game on the
17 porch of an empty house in the neighborhood.
18 There was a party going on at Tawaskie's
19 mother's house, Bridgette Williams, and
20 Tawaskie left that party and went over to the
21 dice game.

22 At the game, Tawaskie heard Wet Willie,
23 Pop and Ant talking again about robbing Big
24 Al's. He saw them with guns, and he saw them
25 loading the guns with bullets. He saw this

1 defendant, Wet Willie, with a .40 caliber gun;
2 and he saw Pop, another one of the
3 co-defendants, Delano Smith with a chrome nine
4 millimeter gun. Wet Willie, Pop and Ant asked
5 Tawaskie if he would participate in the
6 robbery, and Tawaskie said no.

7 After the game ended, Pop, Wet Willie, and
8 Ant left and went to Wet Willie's house, this
9 defendant's house, while Tawaskie went to his
10 mom's house, which was nearby in the
11 neighborhood and sat on the porch. When
12 Tawaskie saw this defendant Wet Willie and Pop
13 again, they had changed clothes. Wet Willie
14 had on black jeans and a black shirt. Pop had
15 on blue jeans and blue jogging pants and a blue
16 shirt, and Ant had on blue jeans and a white
17 shirt. They all asked him again if he wanted
18 to participate in the robbery, and Tawaskie
19 said no. He refused, and he saw all the
20 co-defendants leave.

21 Tawaskie was near this store when the
22 shooting took place, and he actually heard the
23 gunshots. Moments later, he saw Wet Willie,
24 this defendant; Pop and Ant jump over a brick
25 wall behind the store with masks over their

1 face carrying guns.

2 Tawaskie would identify State's Exhibit 11
3 as being the wall. The wall is actually going
4 to be to this side. This is going to be the
5 side of the building, but to the back right
6 here, he would identify this as being the wall
7 that they actually jumped over, the wall that
8 leads to Tulane Court. Tawaskie said he saw
9 them -- his testimony would be that he saw them
10 act as if they dropped something, saw them act
11 as if they wanted to pick it up, but they
12 decided not to, and they took off running to
13 what he refers to as the cut.

14 Tawaskie's testimony would have also been
15 -- well, actually, it also is that he would
16 identify Willie Gardner, the defendant, here in
17 this courtroom today as being Wet Willie.

18 Trying to focus just a little bit to give
19 you an idea of what the witnesses -- the
20 stipulations that have been given. That was
21 the testimony of Tawaskie Williams.

22 Next, we have the testimony of Mickey
23 Phillips, who is the store owner. Mickey
24 Phillips is the owner of Premium Package Store,
25 which is commonly referred to again as Big

1 Al's. His testimony would be that Big Al's was
2 a family store that had been in existence for
3 about 25 years. The store is located at 1114
4 Adams Avenue here in Montgomery County right
5 near Tulane Court by the Church's Chicken
6 that's on Adam's Avenue.

7 The victims, Travis Benefield and Ray
8 Davis, were both employees at the store. His
9 testimony would be that Travis Benefield kept a
10 gun near the register. Money and gun were
11 missing from the store after the robbery and
12 the store -- his testimony would be that the
13 store is equipped with a video surveillance
14 system. Videotapes were recorded and kept as a
15 regular course of business activity for
16 external theft, people coming in doing
17 something to the business and for any possible
18 internal thefts.

19 Mickey's testimony is that the video
20 surveillance system was working at the time of
21 this robbery on September 3rd, 2001 and that
22 this incident was actually recorded. Mickey
23 Phillips reviewed the tape and observed that
24 the date and the time that were actually
25 recorded on the videotape were wrong. But his

1 testimony is that the date and time were
2 actually wrong prior to the shooting.

3 The cameras in the store are located in
4 four places. Therefore, on the video, the
5 surveillance video that you're going to get a
6 chance to watch, there are going to be four
7 frames shooting simultaneously. The video is a
8 time-lapsed video so when it's played, it plays
9 faster than in real time.

10 Mickey Phillips would identify State's
11 Exhibit 2 as a layout of his store. He would
12 identify State's Exhibit 3 as the front of the
13 store. And he would also identify State's
14 Exhibit 1 as the surveillance tape that
15 recorded the events on the date in question.

16 Judge, we offer State's Exhibit 1 at this
17 time.

18 THE COURT: I'm sorry?

19 MS. PERKINS: We offer State's Exhibit
20 1 at this time.

21 MR. BELSER: No objection.

22 THE COURT: It's admitted.

23 (State's Exhibit 1 was admitted
24 into evidence.)

25 MS. PERKINS: Next would be the

1 testimony of Officer B. F. Harrison. Officer
2 Harrison is employed with the Montgomery Police
3 Department. He currently works in the
4 detective division, but back in September of
5 2001, he worked in the patrol division.

6 On Labor Day, September 3rd of 2001,
7 Officer Harrison was on duty, and he was
8 actually patrolling his district, which is that
9 area where Tulane Court is when he received a
10 call of a robbery at the Premium Package
11 Store.

12 He arrived on the scene, and he observed
13 the victim, Travis Benefield, lying on the
14 floor behind the counter with what appeared to
15 be multiple gunshot wounds. He and other
16 patrol officers that came on the scene with him
17 looked through the scene to see if there were
18 any other wounded victims. He found Ray Davis
19 in the back office. And then Officer Harrison
20 began to secure the scene as departmental
21 policy requires that they do when they get to
22 an incident where a crime takes place. And
23 they do this to ensure that no evidence from
24 the crime scene is tampered with or
25 contaminated.

1 Officer Harrison also began to speak with
2 witnesses on the scene, and he remained at the
3 scene until medical personnel arrived and
4 tended to the victim and detectives that came
5 to investigate the crime scene. He would also
6 identify State's Exhibit 3 to be the store
7 where he arrived when he got the call to be
8 Premium Package Store.

9 Next would be the stipulation of Officer
10 Huett. W. R. Huett was employed back in
11 September of 2001 at the Montgomery Police
12 Department as an evidence technician. He is
13 currently retired after 20 years of working
14 with the department. Now he's at the Alabama
15 State Board of Licensure for Professional
16 Engineers.

17 The duties of an evidence technician,
18 which was his job back at the time of this
19 incident, is to document what happened at the
20 crime scene, document what he sees, to collect
21 and preserve evidence for testing and preserve
22 the evidence for trial. And back on Labor Day
23 of 2001, Officer Huett got a call to come and
24 handle this crime scene at Premium Package
25 Store. He arrived on the scene about 9:30 p.m.